

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 58 (S/B) of 2005

V.P. Sharma S/o Late Sri C.L. Sharma,
R/o Qr. No. 346, Type-III, Sector-5-B, BHEL, Hardwar
..... Petitioner
Versus

1. Bharat Heavy Electicals Ltd., Ranipur, Hardwar through its Executive Engineer
2. General Manager (HR-NEX), Bharat Heavy Electicals Ltd., Ranipur, Hardwar
3. Addl. General Manager (QC-FAB & DFP), Bharat Heavy Electricals Ltd., Ranipur, Haridwar

.....Respondents

Sri Pankaj Miglani, ld. counsel for the petitioner.
Sri B.P. Nautiyal, learned counsel for the respondents.

Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: March 28, 2006

By means of this writ petition, the petitioner has prayed for writ of certiorari quashing the order dated 11/13.01.2003 (Annexure No. 4) whereby the petitioner had been punished by awarding him the penalty of demotion for three years to the immediate lower post.

2. Only a short challenge has been raised in the writ petition that the punishment order in question cannot be sustained in the eye of law in as much as the same has been passed without following the guidelines laid down by the Apex Court in the case of ***“Union of India Vs. Mohd. Ramzan Khan (1991) 1 SCC 588”*** and confirmed by the Apex Court in the case of Managing Director, ECIL Hyderabad Vs. B. Karunakar (1993)4 SCC 727.

3. In the instant case, the petitioner could not get any opportunity on hearing or a show cause by the

Respondent No. 3 before imposing the punishment upon the petitioner, which could influence the mind of the punishing authority. By consideration thereof, the punishing authority could have changed its mind to inflict major punishment. Furthermore, on account of non-supply of the copy of the inquiry report, the petitioner could not prefer the appeal and had to approach this Court. When the writ petition was filed, a copy of the report was served on the petitioner.

4. Learned counsel for the respondent Sri B.P. Nautiyal vehemently argued that since the copy of the inquiry report has been supplied, he may be relegated to avail the remedy to file the appeal as provided. Since the copy of inquiry report was not supplied to the petitioner, which debarred him from filing appeal and petitioner was forced to move this writ petition, therefore, due to supply of the enquiry report after filing of the writ petition, we are not inclined to relegate the petitioner to avail the remedy of appeal provided under the Rules. Admittedly, the copy of the inquiry report was not supplied which caused prejudice to the petitioner in as much as he could not explain to the punishing authority qua exoneration or reduction of punishment before passing of the impugned order. Therefore, the petitioner is directly prejudiced on account of non-supply of copy of inquiry report. In view of this, impugned order cannot be sustained.

5. In view of the law laid down by the Apex Court (Supra), the writ petition is allowed and the order dated 11/13.01.2003 is hereby quashed.

6. However, it is open for the respondent to take appropriate action in accordance with the law laid down by the Apex Court (Supra).

(B.C. Kandpal, J.) (P.C. Verma, J.)